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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 FRONTIER AIRLINES, INC.,

4 Plaintiff,

5 v.

20 Civ. 9713 (LLS)

6 AMCK AVIATION HOLDINGS IRELAND  
7 LIMITED, ACCIPITER INVESTMENT  
8 4 LIMITED, VERMILLION AVIATION  
9 (TWO) LIMITED, WELLS FARGO  
10 TRUST COMPANY, N.A., solely in  
its capacity as OWNER TRUSTEE,  
and UMB BANK, N.A., solely in  
its capacity as OWNER TRUSTEE,

11 Defendants.

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12 New York, N.Y.  
13 October 6, 2023  
3:00 p.m.

14 Before:

15 HON. LOUIS L. STANTON,

16 District Judge

17 APPEARANCES

18 LANE POWELL PC  
Attorneys for Plaintiff  
19 BY: DAVID G. HOSENPUD  
AARON SCHAER

20 CLIFFORD CHANCE US LLP  
Attorneys for Defendants  
21 BY: JEFF E. BUTLER  
22 JOHN P. ALEXANDER

NA6CfroC

1 THE COURT: Your submissions are very, very good.  
2 It's good lawyering on both sides. Of course legally, really  
3 nice case.

4 Why is it nonjury, is it because of the contract?

5 MR. BUTLER: Yes, your Honor. There's a jury waiver  
6 in the contract.

7 THE COURT: My only question is when do you want  
8 trial? But I could answer some of your questions perhaps.

9 MR. HOSENPUD: Your Honor, we think that we want to be  
10 able to clear '23 because of the potential scheduling issues  
11 with our witnesses. So over into the new year, January,  
12 February timeframe.

13 MR. SCHAER: For me, either in middle January or  
14 middle of March. I have a February conflict.

15 MR. BUTLER: For our part, your Honor, we're obviously  
16 eager to hear about the Court's schedule and the Court's  
17 preferences for trial. We, of course, have issues of our own.  
18 We haven't had a trial date yet to give notice to witnesses to  
19 get them to be able to travel to New York, our witnesses are in  
20 Ireland.

21 THE COURT: Where are they located?

22 MR. BUTLER: Ireland, your Honor.

23 THE COURT: Are they?

24 MR. BUTLER: Yeah. Our client AMCK with the defendant  
25 in this case was Ireland-based, and the former employees who

NA6CfroC

1 will be the key witnesses are still located in Dublin.

2 THE COURT: How many do you think?

3 MR. BUTLER: For our side, there are really only two  
4 key witnesses, your Honor.

5 THE COURT: Both in Dublin?

6 MR. BUTLER: Both in Dublin, correct.

7 MR. HOSENPUD: We believe we have four key witnesses,  
8 your Honor. There will be, obviously, some deposition  
9 transcript excerpts and counsel and I have discussed working  
10 that out and exchanging, highlighting.

11 THE COURT: The main thing on that is not to have to  
12 make rulings, do them in advance so it's one smooth transcript.

13 MR. HOSENPUD: Understood.

14 THE COURT: That's easily done.

15 Where are your witnesses?

16 MR. HOSENPUD: Largely, one is in Italy and three are  
17 in Colorado. So that will take a little bit of engineering for  
18 that gentleman's schedule in Italy.

19 THE COURT: What are they going to testify to?

20 MR. BUTLER: Well, your Honor, I think the key issue  
21 in the case is whether there's been a waiver of the right to  
22 timely payment. The contention is that there was waiver either  
23 on this April 7 telephone conference between Paul Sheridan, who  
24 is the CEO of my client, and James Dempsey, who is the CFO and  
25 is the CFO of Frontier Airlines. Then there's a possibility of

NA6CfroC

1 a further waiver that could have occurred on a subsequent call,  
2 but we're really talking mainly, I believe, about what happened  
3 on a single telephone call on April 7, 2020, from our  
4 perspective.

5 THE COURT: Is there a transcript of the call?

6 MR. BUTLER: No, your Honor, there's no written record  
7 of the call and memories differ.

8 THE COURT: And who was on the call? These witnesses  
9 or were they just in the room?

10 MR. BUTLER: It was really a call between two  
11 individuals and everyone else was joining in on the call.

12 THE COURT: And so what are the witnesses going to  
13 testify?

14 MR. BUTLER: Presumably about what they remember about  
15 that call, your Honor. Among other things, I guess surrounding  
16 events. Some surrounding events may cast light on what was --  
17 whether any commitment was made on that call.

18 THE COURT: To which they weren't parties, they were  
19 simply in the same room.

20 MR. BUTLER: I think, for example, on both sides, your  
21 Honor, the two participants of that call, when they hung up the  
22 phone, they had communications with their colleagues on each  
23 side, and there was given indication of what was discussed on  
24 the call.

25 THE COURT: And at least their understanding of it.

NA6CfroC

1 MR. BUTLER: Correct, your Honor.

2 THE COURT: And possibly a little motivation.

3 MR. BUTLER: Correct. Exactly right.

4 MR. HOSENPUD: Yes. And from the plaintiff's  
5 perspective, your Honor, we think that this entire pattern of  
6 communication continued through April and into May through both  
7 internal communications and external communications between the  
8 parties. So we really have a concentrated period of time  
9 starting in late March --

10 THE COURT: When was the communication terminating the  
11 relationship?

12 MR. HOSENPUD: May 8.

13 THE COURT: May 8th?

14 MR. HOSENPUD: 2020.

15 THE COURT: And so these go past that.

16 MR. HOSENPUD: These go up to it.

17 THE COURT: Up to?

18 MR. HOSENPUD: Yes.

19 THE COURT: Okay.

20 MR. HOSENPUD: And there are a few stragglers that go  
21 past it, but the primary communications, which we think  
22 demonstrate our position in the case, continued right up to  
23 May 8th.

24 THE COURT: It's a great case to try, no question.

25 In the first place, what is the way, by way of

NA6CfroC

1 documentation, of any of the takings of position?

2 MR. HOSENPUD: Yes. We have jointly agreed to  
3 approximately, and I'd have to look at the list, about 135  
4 documents, your Honor. There are a few that are in contention,  
5 but very few. So it's that paper trail of email, contracts,  
6 text messages that inform the parties' positions.

7 THE COURT: So long since I've tried a business case,  
8 I've forgotten how useful the emails were – lethal.

9 What kind of a concept do you have without having  
10 verified it with your clients about when, generally, you want a  
11 trial?

12 MR. BUTLER: From our perspective, I haven't checked  
13 on the particular availability of witnesses, but I would have  
14 the similar timeframe in mind that we could certainly  
15 contemplate something in January or February subject to the  
16 Court's schedule or earlier if necessary, but we would want to  
17 have the opportunity to go and talk to our clients and just  
18 confirm the witnesses will be available and don't have some  
19 conflict that we don't anticipate.

20 MR. HOSENPUD: Your Honor, from our perspective, given  
21 my colleague's intimate involvement in this case and the fact  
22 that he will be with me at trial, we have mid January or mid  
23 March to avoid a conflict on Mr. Schaer's schedule.

24 THE COURT: That's the time you can try.

25 MR. HOSENPUD: Yes, mid January or mid March.

NA6CfroC

1 THE COURT: From mid January, that's where I start  
2 being booked of a slow and small series of other cases. This  
3 case, what do have? Recite what we've got.

4 THE DEPUTY CLERK: In January, we have the Chanel  
5 case, and then February we have the FTC case, January 9th and  
6 February 6th.

7 THE COURT: I think you've got to figure that will  
8 take three weeks. There's no reason to really expect it to go  
9 beyond, except for the fact that all expectations are so much  
10 guesswork, but for present purposes, I would think three weeks  
11 for that. That's January and I'm biting into February or at  
12 least up to February. Then we're free --

13 THE DEPUTY CLERK: No, FTC is February 6, and they're  
14 expecting five weeks.

15 THE COURT: The next month is March. Those are solid  
16 bookings. What seems to me, maybe a blessing in your case, is,  
17 number 1, it's non-jury. Number 2, the individual witnesses  
18 can really be taken in any order. It might be that we're going  
19 to end up trying it in little bites, filling it in in the times  
20 that I have available and you have available, and the witness  
21 has it, and that that really wouldn't matter. It may turn out  
22 that that's a great convenience.

23 MR. BUTLER: We can pick and choose the dates, yes.

24 THE COURT: But while I do another trial, it has to be  
25 tried as a unit.

NA6CfroC

1 MR. HOSENPUD: Your Honor, does the --

2 THE COURT: Because you piece it all together at the  
3 end and it's a question of law on the waiver with the key  
4 evidence, what happens during that period up to May.

5 MR. HOSENPUD: Does the Court have available --

6 THE COURT: Just tell me so I can be thinking about  
7 it. May 8th was the termination, so this is all  
8 pretermination?

9 MR. HOSENPUD: Essentially, with a little bit after.

10 Just wondering, does the Court have an opening during  
11 the week of the 18th of March?

12 THE COURT: Do I have a?

13 MR. HOSENPUD: Is your trial docket open during the  
14 week of March 18? And would you be done with the FTC case?

15 THE COURT: How long do they think the FTC case --

16 THE DEPUTY CLERK: Five weeks.

17 THE COURT: Oh, you said five weeks. I doubt it's  
18 shorter. It would be dangerous. Their guess is at least as  
19 good as mine and much closer to the facts. Is that how you got  
20 to March 18?

21 MR. HOSENPUD: That is. I counted five weeks and I  
22 threw in another.

23 THE COURT: That would give you a little lump at the  
24 end of March. If you were to try it all in one lump, how long  
25 do you think it would take, couple of weeks?



NA6CfroC

1 MR. HOSENPUD: Our estimate is five trial days – three  
2 and a half for the plaintiff, one and a half for the defendant.  
3 So if the Court held trial in a five-day week, five days for  
4 the week, one week.

5 THE COURT: What's the earliest?

6 MR. BUTLER: Again, it's subject to witness  
7 availability, which I don't know right now. But the earliest  
8 that we could do it is I think December at the earliest, but  
9 again, that's subject to checking conflicts and our witnesses  
10 are not --

11 THE COURT: It might be quite needed.

12 We're free in December, aren't we?

13 THE DEPUTY CLERK: After December 11th, starting from  
14 the 12th.

15 THE COURT: I'm going away on the 22nd, but that's  
16 10 days. We might be able to use that time quite usefully  
17 depending --

18 MR. BUTLER: For our part, we'd be happy to go back to  
19 see if that would work for our people. I don't know if you  
20 guys have your own conflict during that timeframe.

21 MR. HOSENPUD: We would need to check, as well.

22 MR. BUTLER: But particularly, given the other  
23 conflicts that you have in January and February, I mean, that's  
24 an obvious solution if we can make it work.

25 THE COURT: I was just thinking, would it be good or

NA6CfroC

1 bad or neutral if there was really substantially no  
2 differentiation between the plaintiff's case and the  
3 defendants', we simply took the witnesses as they become  
4 available, how much difference would it make? Still talking  
5 about a finite time. It's not like a jury where you can  
6 assemble the evidence after the case is closed and that might  
7 be necessary or the best roll. So it's really a question of  
8 putting it on the record.

9 MR. BUTLER: I agree, your Honor.

10 THE COURT: I'll be listening to it and of course I  
11 can straighten it out in my mind.

12 MR. BUTLER: I haven't thought about this possibility,  
13 your Honor, but I don't see why it wouldn't work, and it would  
14 enable us to, if we know the dates the Court is available, I  
15 could pick and choose.

16 THE COURT: I'll have those 10 days, day-to-day,  
17 that's what I figure.

18 MR. BUTLER: It might be efficient to have one witness  
19 per day, especially so we don't have to worry about witnesses  
20 coming in and not being sure of when they'll be able to  
21 testify.

22 THE COURT: What do you think about that?

23 MR. HOSENPUD: Your Honor, obviously my preference  
24 would be to put on our case, and if we selected --

25 THE COURT: What I'm really asking is to the extent

NA6CfroC

1 that it's impossible to do that, how damaging is it? It might  
2 not matter at all.

3 MR. HOSENPUD: And just going through the back and  
4 forth in my mind with all the various testimony that we've  
5 gathered and the documentation, the only thing I can think of,  
6 potentially, is the damages witnesses as something that might  
7 be a different dynamic, the damage experts, and then also  
8 preparation in terms of how it is scheduled.

9 THE COURT: Supposing we took the damage experts out  
10 of the calculation on the theory that we basically try  
11 liability first and everybody's experts can testify then, I'm  
12 not suggesting you do it, just if you took them out of the  
13 calculation, it might simplify the calculation.

14 MR. HOSENPUD: Is your thinking that they would be  
15 testifying after the liability witnesses?

16 THE COURT: Yes.

17 MR. HOSENPUD: In the same period of time set for  
18 trial?

19 THE COURT: Whatever period of time is available or  
20 even take a verdict as a sort of bifurcation.

21 MR. HOSENPUD: And that would depend on the Court's  
22 ruling as the trier of fact, that would come out potentially  
23 weeks later and then we would schedule the damage experts  
24 depending on that outcome.

25 THE COURT: Certainly potentially, but not

NA6CfroC

1 necessarily.

2 MR. HOSENPUD: My preference personally would be to  
3 try the case.

4 THE COURT: Straight.

5 MR. HOSENPUD: Straight, and have our witnesses,  
6 liability and damage testimony to the Court rather than jump  
7 over the damage witnesses and then reschedule some weeks later,  
8 depending on the Court's calendar.

9 THE COURT: And you think the plaintiff's damage  
10 witness would be all of the plaintiff's case?

11 MR. HOSENPUD: Yes.

12 THE COURT: And no more damages until you come to the  
13 end of the defendants' case.

14 MR. HOSENPUD: Yes.

15 THE COURT: I think there are a couple of principles  
16 involved. One is the basic assumption, probably the safest  
17 working assumption of a whole lot of shaky assumptions is that  
18 I can give you about 10 days in December following day-by-day,  
19 and that the most desirable thing is to get the cases in in the  
20 old fashioned way. Now, that might mean that the plaintiff can  
21 get finished in that time in one unit and, by definition, that  
22 leaves the defendants' case at least not being interrupted by  
23 plaintiff's evidence. It may be interrupted by events. It  
24 seems to me that's one principle.

25 Another is no matter how much you chop up the evidence

NA6CfroC

1 because it's easier to do than in almost any other case I've  
2 seen, in little units, little bites that will fit together  
3 later as though you were cutting and pasting emails. Still,  
4 the human mind tends to envision and remember chronologically.  
5 It's the easiest way and it's the most familiar and it's  
6 basically the way we think, and it's probably better. To the  
7 degree we can do that, it's better. I think it's much less  
8 essential than it would be in a different kind of case because  
9 you can patch it together in your posttrial briefs. Still, it  
10 is a function of comprehension.

11 MR. HOSENPUD: And we've largely attempted to  
12 structure --

13 THE COURT: Mike, if we can give them 10 days in  
14 December, when's the next time we could pick it up, March?

15 THE DEPUTY CLERK: No, probably a few days after you  
16 come back.

17 THE COURT: There are only about two days. I come  
18 back the 2nd of January. Well, we're really going into Chanel,  
19 the case for that time, and they may need three days of  
20 concentration before we take them in on the 9th.

21 THE DEPUTY CLERK: There might be time in between the  
22 two trials.

23 THE COURT: I don't think it's workable. I think  
24 we'll probably be too busy getting ready for Chanel. And that  
25 means, basically, the middle of March.

NA6CfroC

1 THE DEPUTY CLERK: Yes.

2 THE COURT: Well, so be it. Is there any particular  
3 harm in a rather long interval?

4 MR. BUTLER: From my perspective, your Honor, I would  
5 not invite such a long interval. I would rather try to try the  
6 case in December in its entirety or, if we can't do that, it  
7 would be better --

8 THE COURT: You think you can, 10 days?

9 MR. BUTLER: Oh, yes. The parties think we need only  
10 five days, your Honor, five trial days.

11 THE COURT: Why don't we shoot for that?

12 MR. BUTLER: I think we'll try, but it's only subject  
13 to witness availability.

14 THE COURT: Of course.

15 MR. BUTLER: And it being relatively close in  
16 December.

17 THE COURT: There are pluses. You're able to give the  
18 witnesses a good deal of notice, and what they want more than  
19 anything else is their commitment that this is really going to  
20 happen and don't shift it around. It's the breaking of their  
21 schedules that makes the problem.

22 MR. BUTLER: Right. From my perspective also, though,  
23 and I don't know if counsel shares it, it's good to concentrate  
24 on everything in one period of time, if possible.

25 THE COURT: That's ideal.

NA6CfroC

1 MR. BUTLER: And that's why I think we should try to  
2 make it work in December.

3 THE COURT: Yes.

4 MR. BUTLER: And if that just proves to be impossible,  
5 we should not try to start in December and go to March, we  
6 should just schedule it for March and have our week then.

7 THE COURT: And a lot will depend on how much is left  
8 over, if any.

9 MR. BUTLER: If we can find the time in December, I'm  
10 very confident we can try the case in a week in December.

11 THE COURT: I think that's what we better do. The  
12 chances are good and the positives are very desirable. And if  
13 you have one loose witness that's going to have to pick up in  
14 March, well, you're still way ahead.

15 I did that when I was a lawyer on a case. It was a  
16 non-jury case in supreme New York, and by the time we had tried  
17 the rest of the case, the testimony of the witness in  
18 California that I had thought was sort superfluous had become  
19 key. So we waited until he could come over and testify, and it  
20 wasn't until midwinter and then we came in, he came right in,  
21 he was wonderful and won us the case.

22 MR. BUTLER: So it can be done.

23 THE COURT: Right. If something like that can happen,  
24 then there's really no injury to the case at all. Life goes  
25 on, you do other things, and then you go back to thinking about

NA6CfroC

1 them.

2 MR. HOSENPUD: Your Honor, understanding what has been  
3 said here, I echo the preference of trying it together if we  
4 can, and depending -- we'll confer with each other about our  
5 witness scheduling, but I've yet to decide whether I call as  
6 adverse witnesses some of the witnesses that are being put  
7 forward in the defense case.

8 THE COURT: You can always videotape. I'm just like  
9 any juror, they all love videotape. It's like going to a  
10 movie.

11 MR. BUTLER: I'm glad to hear you say that, your  
12 Honor, because there's a possibility that if there's a  
13 difficulty for one of our witnesses in traveling to New York,  
14 we could just arrange for a trial deposition in Ireland that  
15 can then be shown to the Court.

16 THE COURT: Sure. That's entirely --

17 MR. BUTLER: I don't think that will be necessary, but  
18 if necessary, we'll raise it with your Honor.

19 THE COURT: It's entirely acceptable in principle, and  
20 it settles a lot of scheduling questions.

21 Well let's, for present purposes, schedule the trial  
22 in December. A normal trial day is about 11:30 or 11:00 to  
23 1:00 and then 2:00 or 2:15 to 5:00. That sounds short, but we  
24 get a lot done.

25 MR. BUTLER: So if I understand your Honor, we'll set



NA6CfroC

1 it for December 12th, but can we also have the --

2 THE COURT: I'm the one with the schedule as it turns  
3 out.

4 MR. BUTLER: I'm sorry. December 11th would be the  
5 first day of that week.

6 THE DEPUTY CLERK: That would be the 12th.

7 THE COURT: I see. I see. You're back on the 9th?

8 THE DEPUTY CLERK: Back on the 11th.

9 THE COURT: Oh, on the 12th because Monday is the --  
10 okay. So that's Tuesday the 12th. I just want to make sure  
11 these are clear. I've got a doctor's appointment on the  
12 Thursday, but it's far away and it's easy to shift that. It  
13 wouldn't make any trouble. I wouldn't worry about that. If I  
14 have notice so I can give him notice, long notice, then  
15 December 17, 18, 19, 20, 21, and that's the end of the  
16 available time in December.

17 MR. BUTLER: So you have days available through the  
18 21st?

19 THE COURT: Through the 21st, but not Friday the 22nd.

20 MR. BUTLER: What I would propose, your Honor, is that  
21 we confer with our witnesses, Mr. Hosenpud and I will confer to  
22 see if we can slot our witnesses into those days, even if  
23 they're not consecutive days.

24 THE COURT: I wouldn't worry. Don't worry about the  
25 order of proof. And, really, it's a tertiary consideration.

NA6CfroC

1 MR. BUTLER: Right.

2 THE COURT: Particularly where we're talking about a  
3 sequence of calls and they'll really separate goals and  
4 separate little units of proof, and as I say, you can put them  
5 in chronological order, even though they came in at trial at  
6 different times.

7 MR. BUTLER: Right.

8 THE COURT: It wouldn't make any real difference. I  
9 wouldn't worry about it. Then we're out of gas until March.

10 MR. BUTLER: Well, we might be able to get it done,  
11 your Honor.

12 THE COURT: Maybe we'll finish.

13 MR. BUTLER: I think we should be optimistic about it  
14 at this point.

15 THE COURT: Okay. Let's do this --

16 MR. BUTLER: We'll let you know.

17 Can we have -- we don't need a fixed timeframe, but I  
18 think we'll try to let the Court know as soon as we can if  
19 there's any problem with that plan or if we can't make it work.

20 THE COURT: Something basic that you know it's not  
21 going to work.

22 MR. BUTLER: And I think we had also, and I would  
23 suggest that I confer with Mr. Hosenpud on this, we probably  
24 would like to have some -- there's some pretrial events that we  
25 need to work out, like deposition designations, if there are

NA6CfroC

1 transcripts we want to use, so each side can designate and  
2 counter designate.

3 THE COURT: You have time for that, sure.

4 MR. BUTLER: There's also an issue, we may have some  
5 motions *in limine*. Does the Court have a preference as to how  
6 we handle those? Should we just pick a briefing schedule for  
7 those or would you have another preference?

8 THE COURT: What relief would you be asking?

9 MR. BUTLER: The one I'm thinking of in particular,  
10 your Honor, is that we have a *Daubert* challenge to the damages  
11 expert, Dr. Neels, the plaintiff is putting forward. That's  
12 why, from our perspective, bifurcating liability and damages  
13 would be great because we could put that issue off, but we have  
14 a challenge to the methodology that Dr. Neels uses in coming up  
15 with his damages calculation. That could be handled at trial  
16 or we could do it as a motion *in limine*. I was hoping to get  
17 your Honor's views on that at this conference.

18 THE COURT: My view is it's much better handled at  
19 trial and subject to cross.

20 MR. HOSENPUD: We would agree.

21 THE COURT: And the whole thing is fought out.

22 The trouble with *in limine* is it's inevitably based on  
23 a theory and the theory is full of assumptions. The fact that  
24 you think the evidence is very convincing and therefore it's  
25 more convenient to win it before trial is not good. It belongs

NA6CfroC

1 in the trial, particularly where it goes to the foundation and  
2 the method because there, you want to hear what he's done and  
3 what the attack on it is together.

4 MR. BUTLER: Understood.

5 As long as we can reserve, I think some courts hear  
6 those types of motions in advance, but as long as we can  
7 reserve the right to challenge the testimony based on the  
8 *Daubert* consideration, that would be fine.

9 THE COURT: Absolutely. And all of the other  
10 considerations of trial, believability, plausibility, common  
11 sense.

12 MR. BUTLER: Good. We hope all those issues will be  
13 reserved, your Honor.

14 THE COURT: They're all there, but they don't have  
15 much access. I've said this before in other cases, it's a very  
16 sort of a disappointed and a little bit ashamed feeling when,  
17 in the middle of the trial, you realize that something you  
18 excluded *in limine* because the theoretical basis for it was so  
19 convincing is actually would be very useful.

20 MR. BUTLER: Right.

21 THE COURT: And you think why the hell did I decide  
22 that when I didn't have to and it was out of context.

23 MR. BUTLER: We have great confidence that the Court  
24 will be able to sit through the evidence. We're not really  
25 contemplating a motion to exclude evidence in advance, that can

NA6CfroC

1 all be addressed, the weight of evidence can all be addressed  
2 at trial.

3 THE COURT: Well, you said *Daubert*.

4 MR. BUTLER: For *Daubert*, it's just the experts,  
5 whether the expert testimony should be heard at all under the  
6 *Daubert* standard.

7 THE COURT: That point hasn't gone away in the middle  
8 of trial.

9 MR. BUTLER: Understood. Understood.

10 THE COURT: I suppose you can demand an offer of proof  
11 or something like that. The real thing is plow ahead with the  
12 evidence and it can be held to be excluded.

13 MR. BUTLER: Understood.

14 Your Honor, one question, you mentioned at one point  
15 posttrial briefs.

16 THE COURT: I did.

17 MR. BUTLER: Would it be the Court's preference to  
18 hear all the testimony and then rather than have sort of a  
19 traditional closing argument, have the parties submit posttrial  
20 briefs that pull it all together?

21 THE COURT: That's a very fair question. Of course  
22 the honest answer is I don't know because I don't know what I'm  
23 talking about. I'll know at the point of trial when we reach  
24 that point.

25 From this distance, and I've read your briefs

NA6CfroC

1 carefully and I think I understand them, and the waiver point  
2 with the little table that also counts, based on just that  
3 reading, I would say in your case, it was almost unique in the  
4 degree of possibility or probability that it carries that, in  
5 this case, I will decide it almost as a juror at the end of the  
6 trial because that little point is so conclusive and the  
7 evidence on it is so finite, that to make a ruling may be quite  
8 really easy.

9 And the rule is not terribly ambiguous, it's pretty  
10 clear. In this case, much more than the normal case I think,  
11 that possibility is open and I simply will feel so confident on  
12 that point, which is decisive, that I would say there's no  
13 point in having briefing on it, I know what the law is, I know  
14 what the facts are, and there's no point in putting people  
15 through that work. If that's the answer, if they don't like  
16 it, they have to go to appeal. So it's easy, it's a useful  
17 question, I can't answer it, but think I think it's much more  
18 open in the nature of this case.

19 MR. BUTLER: And don't take my question as  
20 encouragement to have posttrial briefing, I'm happy to not to  
21 have to do that, your Honor, if it's unnecessary.

22 THE COURT: Most posttrial briefs are -- well,  
23 somebody described it as kind of some sort of eating cold  
24 cabbage. The more direct one was it was like getting into a  
25 wet bathing suit. I would think that is a much more -- I can't

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1 say probably, because that's a value, a judgment I simply am  
2 not able to make, but more in the picture than it would be in  
3 almost any other case of a trial, susceptible of those elements  
4 coming together and with such conviction that I rest in  
5 judgment or not.

6 MR. BUTLER: Understood, your Honor.

7 THE COURT: It happens all the time in criminal cases.  
8 You don't have to have posttrial briefs.

9 So, pretty much, unless I thought it was wrong in  
10 principle, then I would say I want to hear everything you want  
11 to say in posttrial briefs, but at this point now, I'm unsure.  
12 No point not to go through it. And in your discussions between  
13 yourselves, I think you can understand that and expect it, any  
14 way which seems to me now not having heard one word --

15 MR. HOSENPUD: From the witnesses.

16 THE COURT: -- the evidence or oral argument.

17 MR. BUTLER: Your Honor, I just checked my list I  
18 don't have any other questions. I think we know what we need  
19 to do going forward.

20 THE COURT: Have a nice weekend.

21 \* \* \*